

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1144

B
P/S
see

In The

UNITED STATES COURT OF APPEALS
For the Second Circuit

UNITED STATES OF AMERICA,

Docket No.
76-1144

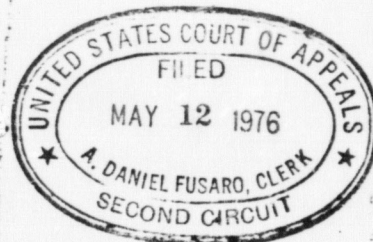
Appellee,

-against-

DAVID S. COURTNEY,

Defendant-Appellant.

APPELLANT'S APPENDIX ON APPEAL



CANTOR & KRAMER, ESQS.
Attorneys for Appellant
Office & P. O. Address
201 West 72nd Street
New York, New York 10023

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UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

-----x

UNITED STATES OF AMERICA,

-against-

DAVID S. COURTNEY,

Docket No.
76 - 1144

Defendant-Appellant

-----x

APPELLANTS APPENDIX ON
APPEAL

CANTOR & KRAMER, ESQS.
Attorneys for Appellant
Office & P. O. Address
201 West 72nd Street
New York, New York 10023

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA :

-v- :

INDICTMENT

DAVID S. COURTNEY, :

75 Cr.

Defendant :

-----x

The Grand Jury charges:

On or about the 24th day of June, 1975, in the Southern District of New York, DAVID S. COURTNEY, the defendant, unlawfully, willfully and knowingly, did embezzle, steal, purloin and knowingly convert to his use and the use of another, and without authority did convey and dispose of a thing of value of the United States and of a department and agency thereof, to wit, a typewriter the value of which exceeded the sum of \$100.

(Title 18, United States Code, Section 641)

FOREMAN

THOMAS J. CANNIL
United States Attorney

BEST COPY AVAILABLE

Felony ☒ JUDGE Assigned Trial **0842** U.S. vs. **COURTNEY, David S.** 10 11 75 10
 Minor Offense ☐ MAGISTRATE 02081 1 Disposition
 Other Misdemeanor ☐ District Office

I. CHARGES

13:641 Theft of Govt. property.

MAG. CASE NO. 1
☐ Denied
☐ AMT. Condition
☐ Set 1000
☐ \$500.00
☐ Bail Not Made
☐ Bail Status Changed (See Docket)

II. ATTORNEYS

Lawrence Iason, AUSA.
(212) 791-0065

Robert Cantor, 201 West 72nd St.
N.Y.C. 10023 873-6700

III. KEY INTERVAL & DATES

ARRREST	INDICTMENT	ARRAIGNMENT	TRIAL
06-35-75	11-10-75	11-2-75	01-27-76
High Prio. Def. & Date Design'd	Waived <input type="checkbox"/> Superseding <input type="checkbox"/> In fact/info <input type="checkbox"/>	Not Guilty <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty <input type="checkbox"/>	Not Guilty <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty <input type="checkbox"/>

III. MAGISTRATE

Search Warrant	Issued	Return	DATE	INITIAL/No.	INITIAL APPEARANCE	INITIAL/No.	OUTCOME
Summons	Issued				PRELIMINARY EXAMINATION OR REMOVAL HEARING Date Scheduled _____ Date Held _____ <input type="checkbox"/> Waived <input type="checkbox"/> Not Waived	Date Held _____ <input type="checkbox"/> Intervening Indictment	<input type="checkbox"/> Dismissed <input type="checkbox"/> Held for District GJ <input type="checkbox"/> Held to Answer to U.S. District AT
	Served						
Arrest Warrant					Tape No.	INITIAL/No.	Magistrate's Initials
COMPLAINT							
OFFENSE (In Complaint)							

IV. MAGISTRATE & DISTRICT COURT DOCKET ENTRIES

• Show last names and suffix numbers of other defendants on same indictment/information.

DATE	PROCEEDINGS	V. Exclud (a) (b)
11-10-75	Filed indictment.	
11-24-75	Deft. not present (Atty. present). Court directs a plea of not guilty. B/W ordered. Case assigned to Wyatt, J.. Ward, J.	
11-25-75	Filed Govt's. notice of readiness for trial on or after 11-25-75.	
11-28-75	Filed the following papers received from Mag. Hartenstine (Mag. #75-938) Docket Entry Sheet CJA Form 23 - Deft's. financial affidavit Criminal Complaint, S.D.N.Y. Disposition Sheet Appointment of Counsel - Robert Cantor, 32 Court St., B'klyn, N.Y. 11201 237-1800	
12-02-75	Filed notice of appearance of Robert Cantor as attorney for deft.	
12-30-75	Filed the following papers from Mag. Hartenstine 75-1661 Docket Sheet Warrant of Arrest : Subject Surrendered to U.S. Mag. Office	
12-19-75	Disposition Sheet.	
1-13-76	Pre Trial Conference Held. Trial Jan 26-1975.	

OFFICERS THE APPLICABLE DOCKET ENTRIES IN SECTION IV SHOW, IN SECTION V, ANY OCCURRENCE OF EXCESSIVE
 DELAY PER 18 USC 3161(b) - "SPEEDY TRIAL ACT".

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
1-22-76	Bench Warrant ordered. Wyatt, J.				
1-22-76	Bench Warrant Issued.				
1-22-76	Dft. produced in court on W/W. (atty present) Bail fixed in the amount of \$500.00 P.R.R. Trial on Jan 27, 1976.				
1-26-76	Issued Remand.				
1-27-76	Filed Appearance Bond P.R.R. unsecured in the sum of \$500.00 acknowledged by the Clerk.				
1-27-76	Trial began with a jury and concluded. Jury finds the Dft. Guilty. Sentence March 5th, 1976 2:30PM. Bail Contd. Pre Sent. Investigation ordered. Wyatt, J.				
2-4-76	Filed remand that dft Courtney is released from the custody of the U.S. MARSHAL upon posting \$500 P.R. BOND unsecured.				
03-05-76	Filed JUDGMENT & COMMITMENT (Atty. Present) The Dft. is hereby committed to the custody of the Atty. General or his authorized representative for imprisonment for a period of SIX (6) MONTHS. Dft. cont'd on bail pending appeal....Wyatt J. /				
03-08-76	Issued Commitment.				
03-11-76	Filed Notice of Appeal from Judgment dtd. 3-5-76.(mailed copies)				
03-29-76	Filed Form CJA 20 Copy 2 - approving payment to Robert Cantor 201 W. 72nd St.NYC dtd. 3-22-76 Wyatt J.				
03-29-76	Filed Form CJA 20 Copy 5 - appointing Robert Cantor, 201 W. 72nd St.NYC dtd. 3-22-76, atty. for dft.				
03-30-76	Filed Notice of Certification of Record on Appeal to the USCA.				
04-07-76	Filed Notice of Certification of Supplemental Record to the USCA.				
04-09-76	Files stipulation designating Government exhibits.				
04-20-76	Filed Transcript of proceeding dtd. 1-13-76.				
04-22-76	Filed Transcript of proceeding dtd. 3-5-76.				
04-21-76	Filed Notice of Certification of Second Supplemental Record to the USCA.				
04-23-76	Filed Notice of Certification of Fourth Supplemental Record to the USCA.				

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Interval (per Section II)	Start Date End Date	Ltr Code	Total Days
(a)	(b)	(c)	(d)

US V.
COURTNEY
1-27-76

126

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CHARGE TO THE JURY

THE COURT: Madam Foreman, ladies and gentlemen
of the jury:

This has been a short trial, but it is
important to the Government and it is important to the
defendant, Mr. Courtney.

In making your decision, you should adopt an
attitude of complete fairness and impartiality. The fact
that the Government is a party and that the prosecution is
brought in the name of the United States does not entitle
the Government or its witnesses to any greater consideration
than that accorded any other party, in this instance, the
defendant. Nor should the Government be granted any less
consideration. All parties, Government and individuals
alike, stand as equals here before the bar of justice.

Now, you, the jury, are the sole and exclusive
judges of the facts. My function, as I said this morning,
is to give you instructions as to the law. Your duty is
to apply my instructions to the facts as you may find them.
You are not to assume that I have any opinion as to the
guilt or innocence of this defendant, or the truth or
falsity of the charge. I may have asked questions
occasionally of one witness or the other. If so, they were
intended to make something clearer for your benefit, and
certainly were not intended to indicate any opinion of mine.

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2 The fact that I have made rulings from time
3 to time on questions of law also relate solely to questions
4 of law which are not the concern of the jury.

5 The indictment, I remind the jury again, is
6 an accusation. It is a charge. The defendant has pleaded
7 not guilty, and you should give no weight to the fact that
8 an indictment has been returned against him. A defendant
9 does not have to prove his innocence. The Government has
10 the burden of proving the charges beyond a reasonable
11 doubt.

12 Reasonable doubt means a doubt founded on
13 reason and arising from the evidence or the lack of evidence;
14 it is a doubt which a reasonable person has after carefully
15 weighing the evidence; it is a doubt which is substantial
16 and not shadowy; it is a doubt which appeals to your reason,
17 your judgment, your experience, your common sense. It
18 is not an excuse to avoid the performance of an unpleasant
19 duty. It is not sympathy for a defendant.

20 A reasonable doubt is not a vague, speculative,
21 imaginary doubt, but such a doubt as would cause prudent
22 persons to hesitate before acting in matters of importance
23 to themselves.

24 Proof beyond a reasonable doubt, members of
25 the jury, does not mean proof to a positive certainty or

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2 beyond all possible doubt. If that were the rule, few
3 men or women, however guilty, would ever be convicted. It
4 is practically impossible for a person to be absolutely
5 and completely convinced of any controverted fact which, by
6 its nature, is not capable of proof to a mathematical
7 certainty; and, in consequence, the law in a criminal case
8 is that the **guilt** of a defendant must be proved beyond a
9 reasonable doubt.

10 The indictment charges the defendant with
11 violating a federal law which reads in pertinent part as
12 follows:

13 "Whoever steals, purloins or knowingly converts to
14 his use anything of value of the United States, or of any
15 department or agency thereof," is guilty of an offense.

16 Now, the indictment reads as follows -- it is
17 short. I read it this morning and I will read it again
18 now:

19 The Grand Jury charges:

20 "On or about the 24th day of June, 1975, in
21 the Southern District of New York, David S. Courtney, the
22 defendant, unlawfully, willfully and knowingly did embezzle,
23 steal, purloin and knowingly convert to his use and the
24 use of another and without authority did convey and dispose
25 of a thing of value of the United States and of a department

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2 and agency thereof, to wit, a typewriter, the value of
3 which exceeded the sum of \$100."

4 Now, that is the charge to which the defendant
5 has pleaded not guilty and that forms the issue for the
6 jury to decide.

7 In order to prove the charge, the Government
8 must prove beyond a reasonable doubt the following two
9 essential elements:

10 First, that there was property, a typewriter,
11 which belonged to the United States or to an agency or
12 department of the United States. Now, the Veterans
13 Administration is, by law, an agency or department of the
14 United States government. Therefore, if you find beyond a
15 reasonable doubt that the typewriter was the property of the
16 Veterans Administration, this element is satisfied. It is
17 not necessary that the Government prove that the defendant
18 knew that the typewriter was government property.

19 The second essential element is that the
20 defendant stole, purloined or knowingly converted the
21 typewriter to his own use.

22 Now, stolen, purloined or converted are words,
23 legal expressions, which mean any taking by which a person
24 dishonestly obtains property which belongs to another with
25 the intent to deprive the rightful owner of such property.

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2 An intent to steal, for example, is an intent to take
3 property belonging to another, to deprive that person or
4 institution or government or administration or bureau of
5 his or its property.

6 An act is done knowingly if it is done volun-
7 tarily and purposely and not because of mistake, accident,
8 negligence or some other such innocent reason.

9 If government property is taken by a defendant
10 into his or her possession with the intent to steal it,
11 the offense has been committed, whether the defendant
12 succeeds in keeping the property or not or whether the
13 defendant succeeds in getting the property away from the
14 premises of the owner.

15 We spoke on intent, in this case the intent
16 to steal, purloin or knowingly convert. Intent involves
17 the state of a person's mind, and while this is a fact,
18 it is a fact which it is impossible to prove by direct
19 evidence, short of an express admission by a defendant.
20 This is because you cannot look into a person's mind and
21 see what his or her intent was.

22 However, like any other fact, intent may be
23 proved by circumstantial evidence. And the circumstances
24 surrounding an incident or transaction may be sufficient
25 as proof of intent to the same extent as more direct evidence.

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2 We usually say that there are two kinds of
3 evidence, direct and circumstantial.

4 Direct evidence is where a person can testify
5 to what he or she saw, heard, observed, something known
6 by virtue of the senses. The sense of sight or hearing,
7 for example.

8 Circumstantial evidence, on the other hand,
9 is evidence of facts and circumstances from which one may
10 infer connected facts which reasonably follow from the
11 common experience of mankind. And we use often as an example
12 of circumstantial evidence the old, old story of Robinson
13 Crusoe, how one day Crusoe saw footprints in the sand on
14 the beach. Crusoe did not actually see a man walking on the
15 beach, but from the fact of the footprints of a man on the
16 beach, Crusoe inferred that, in fact, a man had been
17 walking on the beach. And that is about all there is to
18 circumstantial evidence. You infer, on the basis of reason
19 and experience, from an established fact, the existence of
20 some connected or related fact.

21 Members of the jury, if you find that the
22 Government has proved beyond a reasonable doubt the two
23 essential elements of this charge as I have explained them,
24 and that the defendant is guilty, then the jury must find
25 whether the value of the goods in question, the typewriter,

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2 was more than \$100. The reason for this is simply that the
3 law provides a somewhat greater penalty if the value of
4 the property exceeds \$100.

5 Now, value, according to the Federal Law,
6 means face, par or market value or cost price, either
7 wholesale or retail, whichever is greater. And the value
8 of the property in question is an issue of fact to be
9 determined by you, the jury.

10 I am going to give a little memorandum, when
11 my instructions are concluded, to Madam Foreman as a guide
12 in formulating your verdict, and on that memorandum I
13 indicate a special question as to the value of the property,
14 if you find the defendant guilty. To answer the question
15 that the value of the property was more than \$100, the
16 Government must establish that beyond a reasonable doubt.

17 Members of the jury, we turn for a minute to
18 the credibility of witnesses. How do you determine whether
19 witnesses are telling the truth? Well, as practical men
20 and women, you draw on your own experience in everyday
21 business and social life, in meeting and dealing with people.
22 You take into account any inconsistencies or contradictions,
23 any interest in the matter one way or another, you observe
24 the witnesses. How did they strike you? Did their
25 answers seem clear, candid, frank, open? You take each of

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2 them and you decide on the basis of your own experience
3 whether or not you believe the witness and to what extent
4 you believe him or her.

5 The law does not compel the defendant in a
6 criminal case to take the witness stand and testify, and
7 no presumption of guilt may be raised and no inference of
8 any kind may be drawn from the failure of a defendant to
9 testify.

10 In conclusion, I say that each one of you is
11 entitled to his or her own opinion. You should, however,
12 exchange views among yourselves, each with his fellow
13 jurors or her fellow jurors. That is the very essence of
14 jury deliberation, to discuss and consider the evidence,
15 to listen to the arguments and suggestions of fellow jurors,
16 to present your individual views, and to reach an agree-
17 ment based solely and wholly on the evidence, if you can
18 do so without violence to your individual views.

19 Each one must decide the case for himself
20 or herself, but you should not hesitate to change an opinion
21 which, after discussion with your fellow jurors, appears
22 mistaken in the light of the evidence and the discussion
23 in the jury room.

24 However, if, after carefully considering all
25 of the evidence and the arguments of your fellow jurors,

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2 you maintain a conscientious view which differs from the
3 others, you are not to yield your convictions because you
4 may be outweighed or outnumbered. Your final vote should
5 reflect your conscientious conviction as to how the case
6 should be decided.

7 Members of the jury, your verdict must be
8 unanimous.

9 The jury is not to consider or in any way to
10 speculate about the punishment which the defendant may
11 receive if he is found guilty. Under your oath as jurors,
12 you cannot allow a consideration of the punishment that
13 might be imposed upon a defendant if he is found guilty to
14 influence your verdict or to in any sense enter into your
15 deliberations.

16 The function of a jury is to determine the
17 guilt or innocence of the defendant. It is the judge
18 alone, the Court, who determines and who has the responsi-
19 bility and the duty of determining a sentence, if there is
20 a conviction.

21 The charge here, ladies and gentlemen, is
22 serious. The just determination of the case is important
23 to the public. It is equally important to this defendant.

24 Under your oath as jurors, you must decide
25 the case without fear or favor and solely in accordance

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2 with the evidence and the law.

3 If the Government has failed to carry its
4 burden, your sworn duty is to bring in a verdict of not
5 guilty.

6 If the Government has carried its burden, you
7 must not flinch from your sworn duty, but you must bring
8 in a verdict of guilty.

9 The guilt of the defendant is for you, and
10 you alone, to determine.

11 The Government, to prevail, must prove the
12 essential elements as I described them by the required
13 degree of proof. If it succeeds, as I have just said,
14 your verdict must be guilty. If it fails, your verdict
15 should be not guilty.

16 Your verdict will be returned orally by Madam
17 Foreman in open court, and, of course, the verdict will be
18 either guilty or not guilty. But if guilty, there is a
19 further question as to the value of the property which you
20 will see reflected in the memorandum.

21 If the jury finds the defendant guilty, the
22 clerk will ask: "Did the value of the typewriter, in
23 respect of which you found defendant to be guilty, exceed
24 the sum of \$100?"

25 The Madam Foreman will answer either yes or no.

any of the exhibits, Madam Foreman should send a note by the marshal and we will send in the requested exhibits to you.

If you wish any testimony read to you, likewise send a note through the marshal. Your request will be considered and, if granted, arrangements will be made.

Now, we come to that part of the trial when we must excuse our two alterante jurors, Mrs. Hammond and Mr. Santos. We never know when we start a case how long the trial will last. This happens to have been a very short trial, but if during the trial some emergency arises and a juror has to be replaced, we must have as insurance alternate jurors, otherwise we must start everything all over from the beginning.

Thank you very much, Mrs. Hammond and Mr. Santos, you may retire now and take your things from the jury room so the jury room will be vacated when the jury retires to deliberate.

Any instructions to the alternates, Mr. Clerk?

THE CLERK; Return to room 109.

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2 THE COURT: All right.

3 (Two alternate jurors excused.)

4 THE COURT: Now, members of the jury, would
5 you please remain for just a few moments in silence in
6 the jury box while I see counsel at the side bar for any
7 last-minute questions of law.

8 (At the side bar.)

9 THE COURT: Mr. Moss, does the Government
10 have any exceptions?

11 MR. MOSS: The Government has no exceptions,
12 no requests for a supplemental charge.

13 THE COURT: Mr. Kramer?

14 MR. KRAMER: Yes. The defendant excepts to
15 the entire charge and, more specifically, to the charge as
16 to value and as to the charge to what the explanation of
17 stealing is.

18 It is defendant's contention that the statute,
19 as it reads as to value, is unconstitutional in that it
20 deprives the defendant of his right to due process. In
21 fact, the framers of that statute, the drafters of the
22 statute, did not have in mind that if an item which
23 originally cost \$1,000 but at some particular time was worth
24 fifty cents were to be stolen, that the defendant would be
25 charged with a felony because of what it once cost.

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2 It is the defendant's contention that what
3 was in mind with the drafting of the statute was an
4 antique or a piece of art work, where the value inceases
5 with time.

6 Further, and more specifically, I except to
7 the charge as to taking and the mentioning of an attempt,
8 in that an attempt in a possibility of a mere taking, and
9 defendant is charged with actually taking property and not
10 with attempt. If there was no attempt, a verdict of not
11 guilty must be returned as to the defendant as the indict-
12 ment is drawn up.

13 THE COURT: All right. Thank you.

14 (In open court.)

15 THE COURT: Mr. Clerk, will you swear the
16 marshals.

17 (One marshal sworn.)

18 THE COURT: Now, Madam Foreman, members of
19 the jury, the case is submittted to you for your decision.
20 The marshal will accompany you to the jury room. You may
21 retire.

22 (At 4:00 p.m. the jury retired to deliberate.)

23 THE COURT: All right. We will await the
24 pleasure of the jury.

25 (Recess.)

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2 (Court's Exhibit 1 marked.)

3 (At 4:35 p.m. a note was received from the
4 jury.)

5 (Jury absent.)

6 THE COURT: Mr. Reporter, before the recess I asked
7 the clerk to please give counsel a copy of the little memorandum
8 that I gave to the jury foreman, and also to mark a copy as
9 a Court's Exhibit.

10 We have a note from the jury, and the note says,
11 "Could we please see the pictures of the typewriter?"

12 Are we agreed as to what pictures they are?

13 MR. MOSS: There are three pictures in evidence,
14 Government's Exhibits 1 through 3.

15 THE COURT: 1, 2 and 3?

16 MR. MOSS: Correct.

17 THE COURT: All right. Show them to Mr. Kramer.

18 MR. KRAMER: Actually, 3 is not of a typewriter,
19 it's just of the desk. I don't know if they wanted that or
20 not.

21 MR. MOSS: There's just a small piece of typewriter
22 bolted to the desk.

23 THE COURT: Shall we send it to them or not?

24 MR. KRAMER: I have no objections.

25 THE COURT: All right. Then let's send 1, 2 and 3

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and we can give them to the marshal. Thank you, Marshal.

Mr. Clerk, will you mark the note as a Court's Exhibit?

(Note from jury marked Court Exhibit 2.)

THE COURT: We will wait some more.

(Recess.)

(At 4:55 p.m. a note was received from the jury.)

(Jury absent.)

THE COURT: This note says, "We came to a decision on the theft but on the amount we came out eleven yes and one no," and then it says above, it looks like "value."

"Can we let it go at that?"

Then it says, "Does this have to"--it's rather difficult. Would counsel take a look at the note?

MR. KRAMER: It says, "Does it have to be unanimous?"

THE COURT: Is that it?

MR. MOSS: That's our concession.

THE COURT: I think that we'd better bring the jury in and, Mr. Clerk, we will take the verdict as to guilty or not guilty, and they I will give the instructions about the value.

(Jury present.)

(Note marked Court Exhibit 3.)

18

2 THE COURT: We have your note, members of the jury.
3 We will take the verdict as to guilty or not guilty first, and
4 then, depending on that, I will discuss your note with you.

5 Mr. Clerk?

6 THE CLERK: Members of the jury, please answer to
7 your presence as your name is called.

8 (Jury roll called - all present.)

9 THE CLERK: Madam Foreman, has the jury agreed upon
10 a verdict?

11 THE FOREMAN: Yes.

12 THE CLERK: How do you find?

13 THE FOREMAN: We find the defendant guilty.

14 THE COURT: Mr. Clerk, would you poll the jury,
15 please?

16 THE CLERK: Members of the jury, you say you find
17 the defendant guilty.

18 (Each juror, upon being asked by the Clerk,
19 "Is that your verdict?", answered in the affirmative.)

20 THE COURT: Members of the jury, you say that you
21 have not agreed unanimously on the value of the property in
22 question, that is, the typewriter. And I'm obliged to tell
23 you that we have to have a decision unanimously as to whether
24 the value is above a hundred dollars or less than a hundred
25 dollars. Now, the value has to be one or the other. It must,

2 by definition--its value is more than a hundred dollars or
3 it's less than a hundred dollars.

4 As I explained, the reason for that has nothing to
5 do with the guilt of the offense or not, but it has to do with
6 the punishment provided in the law for the offense.

7 There's one punishment if the value of the property
8 does not exceed the sum of one hundred dollars, and there's
9 another punishment if the value of the property does exceed
10 the sum of one hundred dollars.

11 So that having found the defendant guilty, then
12 I'm obliged to ask the jury to find whether the value of the
13 goods in question, to wit, the typewriter, was more than a
14 hundred dollars or less than a hundred dollars.

15 Now, I'm reading from the statute:

16 "The word 'value' means face, par or market value
17 or cost price, either wholesale or retail, whichever is
18 greater."

19 And I'm afraid I can't do anything more than ask
20 you to go again to the juryroom and see if all twelve of you
21 can agree that the value of the typewriter, on the day in
22 question, July 24th--is it June?

23 MR. MOSS: June 24th.

24 THE COURT: June 24, 1975, is more than a hundred
25 dollars or less than a hundred dollars. So let's make another

effort. You may retire again.

(At 5:00 p.m. the jury retired to further deliberate.)

THE COURT: Mr. Clerk, would you mark the jurors' note with the next Court's Exhibit.

Mr. Clerk, what is an appropriate day for sentence?

THE CLERK: March 5th is approximately six weeks.

THE COURT: Mr. Kramer, what about March 5th?

MR. KRAMER: March 5th is fine, your Honor.

THE COURT: That's a Friday, Mr. Clerk?

THE CLERK: Yes.

THE COURT: We'll be in room 318. And that will be at 2:30 in the afternoon.

Now, what is the bail status of Mr. Courtney?

MR. MOSS: Mr. Courtney is presently under a personal recognizance bond with no cash security.

THE COURT: Does the Government have any suggestion in respect to bail pending sentence? I didn't fix bail and I don't know anything about Mr. Courtney.

MR. MOSS: Your Honor, the present bail conditions are satisfactory to the Government.

THE COURT: All right. Then I take it, Mr. Kramer, that is satisfactory to you?

MR. KRAMER: Thank you, your Honor.

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2 THE COURT: All right. Mr. Courtney came, so,
3 Mr. Courtney, I will continue the bail until sentence, as it
4 has been before.

5 I suppose it's speculating as to whether the jury
6 can agree as to the value of the property. You read the
7 note, or I read it to you. Just thinking out loud, I would
8 suppose that if the jury is unable to agree as to whether the
9 value is more or less than a hundred dollars, I could
10 discharge the jury, and if I didn't impose a sentence of more
11 than that provided for a value of less than a hundred dollars,
12 I wouldn't suppose the defendant would have any kick coming,
13 would you? Mr. Kramer: What do you think about it?

14 MR. KRAMER: Judge, I'm sure he'd have no kick as to
15 that. However, you know my feelings as to the--well, even as
16 far as my feelings as to the statute itself, it wouldn't
17 matter on that particular case, since he's been found guilty
18 of the theft.

19 THE COURT: Yes. Well, let's give the jury a few
20 minutes.

21 (Recess.)

22 (At 5:08 p.m. a note was received from the
23 jury.)

24 (Jury present.)

25 THE CLERK: Madam Foreman, did the value of the

2 typewriter in respect of which you found the defendant to
3 be guilty exceed the sum of a hundred dollars?

4 THE FOREMAN: No.

5 THE COURT: Thank you, Madam Foreman.

6 Now, before I excuse the jury, with our thanks, I
7 take occasion to make two last explanations or statements,
8 which I always do.

9 First, as a presiding judge I never comment on the
10 verdict of the jury, never. So the fact that I make no
11 comment on your verdict means absolutely nothing. It is my
12 habitual practice.

13 And second, I think that when you ladies and
14 gentlemen come in from the community and help us in the
15 administration of justice, you're entitled to the privacy
16 and confidentiality of the juryroom, and I almost always tell
17 jurors that, while we give no instructions on the subject,
18 our suggestion is that if anybody should ever ask you what
19 transpired in the juryroom, that you decline to comment.

20 Now, I have not the slightest idea that anybody
21 will ever ask you, but I take occasion when excusing jurors
22 to tell them that we think that what happened between members
23 of the jury in the juryroom is private between the jurors
24 themselves, and if anybody ever should ask you what happened

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2 in the juryroom, and you don't wish to comment or to reply,
3 you can refer to our explanation.

4 Now, Mr. Clerk, what instructions do we have for
5 the jury? It's a little after 5 o'clock but we've completed
6 the trial.

7 THE CLERK: They are to return tomorrow morning at
8 9 o'clock, room 109.

9 THE COURT: Thank you very much, ladies and gentle-
10 men. You may be excused. Good night.

11 (Jury discharged.)

12 THE COURT: I guess we have nothing further for this
13 evening, have we? So that, Mr. Clerk, we can be in recess
14 until tomorrow.

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